

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

JAMES J. HAYES, Individually and on Behalf of  
All Others Similarly Situated,

Plaintiff,

vs.

HARMONY GOLD MINING COMPANY  
LIMITED, BERNARD SWANEPOL, and  
NOMFUNDO QANGULE,

Defendants.

CASE NO. 1:08-CV-03653-BSJ-MHD

**MEMORANDUM IN SUPPORT OF JAMES HAYES'  
MOTION FOR WITHDRAWAL AND FOR SUBSTITUTION OF COUNSEL**

## **INTRODUCTION**

Pursuant to Local Civil Rule 1.4, Lead Plaintiff James J. Hayes respectfully requests for good cause that this Court permit the law firm of Barroway Topaz Kessler Meltzer & Check, LLP (“Barroway Topaz”) to withdraw as Lead Counsel in this action, and to permit the law firm of Saxena White P.A. (“Saxena White”) to substitute and assume all of the duties and responsibilities of Lead Counsel in this action.

## **ARGUMENT**

1. On October 17, 2008, this Court appointed Mr. Hayes as Lead Plaintiff in this action. This Court also appointed the law firm of Barroway Topaz as Lead Counsel and Brodsky & Smith, LLC (“Brodsky & Smith”) as Liaison Counsel in this action. (Dkt. #11).

2. Lead Plaintiff has now requested the withdrawal of Barroway Topaz and the substitution of Saxena White as Lead Counsel due to a conflict which has arisen between Barroway Topaz and Lead Plaintiff in an unrelated action. The conflict arises out of objections, maintained by Mr. Hayes, to and in connection with the settlement of another action in which Barroway Topaz serves as lead counsel. Due to this conflict, Barroway Topaz and the Lead Plaintiff mutually agree that substitution by Saxena White is in the best interests of the Class and will promote judicial efficiency. As a result of the extensive discussions between the Lead Plaintiff and Barroway Topaz, all alternatives to the withdrawal of legal representation have been fully explored, and have been determined not to provide an adequate remedy for the conflict that has arisen between the parties.

3. Saxena White specializes in securities litigation, and is well-qualified to assume the duties and responsibilities as Lead Counsel on behalf of the putative class.

*See Firm Resume of Saxena White (attached as Exhibit A).* In addition, Saxena White is currently serving as Lead or Co-Lead Counsel in two major securities fraud actions involving the sale of American Depository Receipts (“ADRs”) issued by foreign corporations: *In re Sadia S.A. Securities Litigation*, Case No. 1:08-cv-9528(SAS) (S.D.N.Y.); and *City Pension Fund for Firefighters and Police Officers in the City of Miami Beach v. Aracruz Celulose S.A., et al.*, Case No. 08-23317-CIV-LENARD (S.D. Fla.). Thus, the proposed Incoming Lead Counsel has ample experience dealing with the unique issues which arise in litigation involving foreign corporations, such as service and discovery complications.

4. Lead Plaintiff has also requested the withdrawal of Brodsky & Smith and the substitution of The Law Offices of Curtis V. Trinko, LLP (“Trinko Firm”), as Liaison Counsel. The Trinko Firm is an active practitioner in the Southern District of New York, and currently serves as local counsel for out-of-town law firms in a multitude of actions currently pending in this Court. *See Firm Resume of the Trinko Firm (attached as Exhibit B).*

5. The substitution of counsel will not prevent or impede Lead Plaintiff from satisfying established Court dates, discovery obligations, or other proceedings required for the vigorous prosecution of this action. Lead Plaintiff respectfully requests that the Court approve (i) the substitution of Saxena White for Barroway Topaz as Co-Lead Counsel in this action, and (ii) the substitution of The Law Offices of Curtis V. Trinko for

Brodsky & Smith as Liaison Counsel. This will ensure continuity of representation for both Lead Plaintiff and the proposed Class.

6. Counsel for Defendants have been informed with respect to the relief being requested herein and take no position. A proposed order reflecting the relief requested is attached as Exhibit B for the Court's consideration.

Dated: May 11, 2010

Respectfully submitted,

**SAXENA WHITE P.A.**

/s/ Maya S. Saxena

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*Proposed Incoming Lead Counsel*

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*Outgoing Liaison Counsel*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on May 11, 2010, the foregoing was electronically filed with the Clerk of Court using the CM/ECF system, which will give notice to all registered parties, and sent via First Class Mail to all parties listed below.

*/s/ Curtis V. Trinko*

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